

REMARKS

This is in response to the Official Action currently outstanding with respect to the above-identified application, which Official Action the Examiner has designated as being FINAL.

Claims 1-30 are pending in this application. Claims 1-19 were withdrawn from further consideration in view of Applicants' response to the Examiner's Restriction Requirement. Claims 29-30 previously were withdrawn from further consideration by the Examiner on the basis that Claims 29-30 are directed to a non-elected invention (Applicants having constructively elected the invention of Claims 20-28 by virtue of the issuance of a substantive action on the merits of those claims). By the foregoing Amendment, Applicants are proposing that Claims 20 and 25 be amended so as to place the claims of this application in condition for allowance, or at least in better form for Appeal pursuant to 37 CFR 1.116. Applicants do not propose either the addition or the cancellation of any claims by the foregoing Amendment. Accordingly, in the event that the Examiner grants entry to the foregoing Amendment, Claims 20-28 will constitute the claims under active prosecution in this application.

A version of the claims as they will stand in the event that the Examiner grants entry to this amendment is set forth above as required by the Rules.

More specifically, it is noted that in the currently outstanding Final Official Action, the Examiner has:

1. Again acknowledged Applicants' claim for foreign priority and the receipt by the United States Patent and Trademark Office of the required certified copies of the priority document.

2. Again informed the Applicants that the drawings filed on 26 September 2000
In this application are deemed to be acceptable.
3. Acknowledged Applicant's Information Disclosure Statements of
8 April 2005 and 20 April 2005, and provided Applicants with a copy of
the Forms PTO/SB/08a/b that accompanied those Statements duly
signed, dated and initialed by the Examiner to confirm his consideration
of the art disclosed therein ;
4. Confirmed Applicants' belief that Claims 20-28 constitute the claims
currently under active prosecution in this application.
5. Indicated that the previous rejection of Claims 20-28 under 35 USC 112,
second paragraph as being indefinite for failing to particularly point out
and distinctly claim the subject matter which Applicants regard as the
invention has been overcome by Applicants' next previous Amendment;
and
6. Maintained and made FINAL the previous rejection Claims 20-28 under
35 USC 102(e) as being anticipated by the Wiser reference
(U.S. Patent No. 6,385,596).

With respect to items 1-5 above, Applicants believe that further comment in
these Remarks is not necessary.

With respect to item 6, the Examiner's FINAL substantive rejections of Claims 20-28 remain based upon an alleged anticipation of those claims under the terms of 35 USC 102(e) by the Wiser reference (US Patent No. 6, 385,596). In particular, in response to Applicants' previous argument the Examiner has disagreed with Applicants' alleged assertion that "Wiser does not teach 'a CPU controlling each of said storage apparatus, said first determining apparatus and said controlling apparatus' ". Further, the Examiner suggests that in light of the broadest reasonable interpretation of the claims, he finds that the CPU, which controls the media experience through the web browser, in fact controls the access to the "music distribution center" in a manner that subsequently controls its function to some degree. (Emphasis added)

In particular, Applicants understand the Examiner's present position to be that the CPUs respectively controlling the "music distribution center" and the "music licensing center" in the Wiser reference clearly determine what data will be allowed to be downloaded by a specific media player having a particular "passport" without any control thereof being exerted by the content manager of the media player. Further, however, the Examiner apparently is of the belief that there nevertheless are interactions between the media player under the control of one CPU with the "music distribution center" and the "music licensing center" each under the control of its own respective CPU that somehow is indicative of the media player in some remote manner exerting a "control" over the functions of the "music distribution center" as a result of the interaction between all three CPU's involved via the "passport".

Applicants respectfully submit that the Examiner's current "broadest reasonable interpretation" of the claims of this application in fact constitutes an unreasonable stretching of the meaning of the present claims beyond the reasonable scope thereof determined as it must be in light of the present specification.

Despite this, in the interest of advancing the present application toward an ultimate allowance, Applicants by the foregoing Amendment propose that independent Claims 20 and 25 be amended so as to indicate (1) that the elements therein recited are contained in a housing (see, for example, Fig. 56 as indicative of the inherent nature of this element to the data reproducing apparatus claimed in this application) and (2) that:

"a CPU controlling said storage apparatus, said first determining means, said control apparatus *and the reproduction of said digital data enabled by said control means*"

Applicants respectfully submit that neither of the foregoing amendments introduces any new matter into this application, nor would they require any further consideration and/or search by the Examiner with regard to their respective substantive content. In addition, Applicants respectfully submit that the foregoing amendments would result in the claims of this application being more particularly and clearly directed to the functions directly controlled by the CPU claimed, rather than to the functions of other devices controlled by other CPU's that may tangentially interact with the claimed CPU by way of a status monitoring functions and/or data requests (such as the Wiser Media Licensing Section monitoring the "passport stored in the media player for the purpose of verifying its validity at the beginning of each transaction).

It will be recalled that Applicants have agreed with the Examiner to the extent that the Wiser reference appears to be somewhat similar to the present invention in concept and operation.

Nevertheless, Applicants again respectfully submit that it must be recognized that while the Wiser reference refers to the use of components of a so-called “passport” by a content manager 112 to authenticate a user’s media player during the use of the Music Distribution Center 124 disclosed therein, **Applicants have not found any specific disclosure in the Wiser reference explaining how this is to be accomplished.** This being the case, Applicants’ respectfully submit that the Examiner extremely broad and somewhat vague interpretation of the foregoing function in the Wiser reference is insufficient to justify his present rejections.

Accordingly, as previously stated in these proceedings, it will be understood that the Wiser reference discloses that when the media player is first started up, it first searches for the user’s passport (which in Wiser is stored in, or in association with, the media player). If the media player fails to detect the existence of the user’s passport, a Web browser is automatically launched that directs the user to the URL of a registration page of a media-licensing center.

Thereafter, a registration process takes place between the user and the media-licensing center prior to the allowance of any further communication between the media player and the Music Distribution Center. (See, Wiser at Column 13). Hence, at the outset of its operation, the Wiser apparatus compels a user to obtain a “passport” that includes both public and private keys to be used in the subsequent reproduction of encrypted music files (either free portions with the public key or purchased complete files with the private key) as well as a consumer certificate from the media-licensing center.

In addition, in the Wiser disclosure, the “passport” is monitored by a content manager that is in communication with the Media Licensing Center for the purpose of authenticating the validity of the “passport” stored on the media player at the beginning of each transaction. Thus, while consumer certificates associated with the Music Distribution Center disclosed by Wiser apparently have to be updated frequently (say every 2 to 4 weeks, see Wiser at Column 23, lines 31 to 37), the consumer certificates are valid for periods of 1 year and apparently automatically renew themselves (i.e., compel a re-registration by the user’s media player at the end of their predetermined period of validity, see Wiser at Column 25, lines 40 – 48). Therefore, in Wiser, a comparison of valid user certificates is made at the content manager to determine (1) whether or not the Music Distribution Center is allowed to manage particular files, and (2) whether or not the Music Distribution Center is allowed to transfer data to the reproducing apparatus. This feature of Wiser has apparently been interpreted by the Examiner as being a determination of whether or not the reproducing apparatus (i.e., the media player) is capable of reproducing data received from the Music Distribution Center based upon reproduction apparatus specifying information (i.e., the components of a valid “passport” for the media player contained in the media licensing center as monitored by the content manager) and apparatus ID information (i.e., “passport” components stored in association with the media player seeking access to music files for the reproduction thereof).

Applicants again respectfully submit, however, that the Examiner’s position breaks down as it applies to the presently pending claims of this application both with regard to the claimed “control apparatus” and with respect to the claimed “CPU”.

More particularly, the Examiner’s position is that the “passport” embodied in a memory associated with the media player enables or disables reproduction dependent upon the determination result (i.e., whether the “passport” components stored in association with the media player match the current “passport” components for that media player present in the media licensing center in a manner such that the content manager allows the download of the music files to the media player).

If the foregoing is the case, however, even the Examiner's present extremely broad interpretation cannot be said to reasonably support the fact that in Wiser the same CPU does not control (i) the storage apparatus (in Wiser, the Media Licensing Center and/or the Music Distribution Center), (ii) the first determining apparatus (i.e., the authentication function of the Music Distribution Center), (iii) the control apparatus (i.e., the "passport" stored in association with the media player) and (iv) the reproduction of the digital data enabled by the control apparatus as hereinabove proposed to be claimed.

In addition, Wiser most certainly cannot be said to locate all of the apparatus performing all of the claimed functions in a housing as now proposed to be specifically claimed.

In other words, the present invention is directed to a data reproducing apparatus (device) rather than to a data reproducing system composed of various widely separated components (note in Wiser the media player is contemplated to communicate via the internet, and the Music Licensing Center and the Music Distribution Center are contemplated to be at widely separated locations and in communication with one another via land lines or the like). Consequently, Applicants respectfully submit that contrary to the presently proposed claims, the Wiser reference cannot justifiably be read in any manner other than including widely separated elements such that those elements cannot be construed as being contained in a housing. Further, Applicants respectfully submit that Wiser cannot be interpreted as including a single CPU controlling all of the elements hereinabove claimed as being contained in a housing, rather than a media player CPU that is different from (and separate from) the CPU(s) controlling the Music Distribution Center and Media Licensing Center contrary to the present claims.

Hence, since in order to anticipate a claim a single reference must be shown to disclose all of the elements of the claim at issue co-operating with one another in the claimed manner, Applicants respectfully submit that the Wiser reference fails to anticipate the present invention as clarified in the amendment herein proposed.

Applicants therefore respectfully request that the Examiner grant entry to the foregoing amendment on the basis that its entry will place this application in condition for allowance, or at least in better form for Appeal. Further, reconsideration of this application as hereinabove amended, and the allowance of Claims 20-28 in response to this communication are respectfully requested.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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